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8
9 IN THE UNITED STATES DISTRICT COURT

10 EASTERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,

12 PLAINTIFF,

13 v.

14
15 ROBERT EVERSOLE, aka "Rage,"
CODY BROWN,
ANGEL LOPEZ, and
GEOFFREY GUESS

16 DEFENDANTS.
17
18

CASE NO. 1:20-CR-00241-NONE-SKO

STIPULATION REGARDING DISCOVERY; AND
PROTECTIVE ORDER

19
20 1. As described more fully below, the parties, pursuant to Rule 16 of the Federal Rules of
Criminal Procedure, for the reasons set forth below, hereby stipulate, agree, and jointly request that the
21 Court enter a Protective Order in this case restricting the use and dissemination of certain materials
22 containing personal identifying information ("PII") of real persons and other confidential information of
23 victims, witnesses, and third parties.

24
25 2. As part of its investigation in the above-captioned case, the government is in possession
of materials relating to the charges against the defendants, including voluminous documents that contain
26 PII and other confidential information of real persons, including, among other things, personal names,
addresses, and dates of birth. These real persons are victims, witnesses, or third parties to this case. The
27 government seeks to provide these materials to counsel for the defendants.
28

1 3. The purpose of the proposed Protective Order is to prevent the unauthorized
2 dissemination, distribution, or use of materials containing the PII or other confidential information of
3 others. If this information is disclosed without protective measures, or to defendants without limitation,
4 it will risk the privacy and security of the people to whom the information relates. The information
5 could itself be used to further criminal activity if improperly disclosed or used. The United States has
6 ongoing statutory and ethical obligations to protect the individuals whose PII is contained in these
7 documents.

8 4. Due to the large quantity of discovery¹ that contains PII, redacting all privacy-protected
9 information would be difficult and time-consuming. Accordingly, the parties jointly request a Protective
10 Order that will permit the government to produce discovery that is unredacted, but preserves the privacy
11 and security of victims, witness, and third parties. The parties agree that the following conditions, once
12 ordered by the Court in the proposed Protective Order, will serve the government's interest in
13 maintaining the privacy and security of victims and third parties, while permitting the Defense Team to
14 understand the United States' evidence against the defendants.

15 5. The Government will produce the same discovery circulated in the next large batch
16 discovery dissemination (which is subject to the protective order) with PII redacted in February 2021.
17 While this February production of duplicate discovery is not subject to the protective order covering the
18 instant discovery batch, the parties agree that should defense become aware of any PII that has not been
19 redacted, they will redact it. This does not require them to review all discovery before sharing it with
20 the defendants, but it does require that should defense become aware during their review of the
21 discovery that there is PII that was missed in the redaction process, they will take affirmative action to
22 correct it.

23 6. This Court may enter protective orders pursuant to Rule 16(d) of the Federal Rules of
24 Criminal Procedure, Local Rule 141.1, and its general supervisory authority.

25
26
27 1 The term "discovery" refers to materials of any kind provided to the defense by the
28 Government (except as filed with the Court) pursuant to its obligations under Rules 16 or 26.1 of the
Federal Rules of Criminal Procedure, the Fifth Amendment of the United States Constitution, or Title
18, United States Code, Section 3500.

1 **II. PROPOSED PROTECTIVE ORDER**

2 **A. Protected Materials**

3 7. This Order pertains to all discovery provided or made available to defense counsel in this
4 case (hereafter, collectively “Protected Materials”).

5 8. For purposes of the Protective Order, the term “Personal Identifying Information” (“PII”)
6 includes any information within the definition of a “means of identification” under 18 U.S.C. §
7 1028(d)(7) or any information within the definition of an “access device” under 18 U.S.C. § 1029(e)(1).

8 9. To the extent that notes are made that memorialize, in whole or in part, the PII in any
9 Protected Materials, or to the extent that copies are made for authorized use by members of the Defense
10 Team, such notes, copies, or reproductions become Protected Materials, subject to the Protective Order
11 and must be handled in accordance with the terms of the Protective Order.

12 **B. Defense Team**

13 10. For purposes of this Order, the term “Defense Counsel” refers to the defendant’s counsel
14 of record.

15 11. For purposes of this Order, the term “Defense Team” refers to (1) the defendant’s counsel
16 of record, (2) other attorneys at defense counsel’s law firm or defense organization who may be
17 consulted regarding case strategy in the above-captioned matter, (3) defense investigators who are
18 assisting defense counsel with this case, (4) retained experts or potential experts, and (5) paralegals,
19 legal assistants, and other support staff to defendant’s counsel of record providing assistance on this
20 case. The term “Defense Team” does not include defendant, the defendant’s family, or other associates
21 of the defendant unless they are in categories 1 to 4 in this paragraph.

22 12. Defense Counsel must provide a copy of this Order to all members of the Defense Team.

23 a) Defense Counsel must obtain written acknowledgement from members of the
24 Defense Team that they are bound by the terms and conditions of this Protective Order before
25 providing any Protected Materials to members of the Defense Team. The written
26 acknowledgement need not be disclosed or produced to the United States unless ordered by the
27 Court.

28 b) Members of the Defense Team who are employees of the Federal Defender’s

1 Office who have signed a confidentiality agreement as part of their employment are not required
2 to sign a written acknowledgement. The confidentiality agreement need not be disclosed or
3 produced to the United States unless ordered by the Court.

4 **C. Disclosure of Protected Materials**

5 13. The Defense Team shall not permit anyone other than the Defense Team to have
6 possession of the Protected Materials, including the defendants themselves.

7 14. No person or party shall use any Protected Materials or information derived from
8 Protected Materials produced in this action for any purpose other than use in the above-captioned case.
9 All Protected Materials shall be used solely for the purpose of conducting and preparing for pre-trial,
10 trial, post-trial, and appellate proceedings (both direct and collateral) in this criminal action and for no
11 other purposes whatsoever, and shall not be used for the economic or other benefit of the defendants, or
12 any third party. Protected Materials may be disclosed only to the categories of persons and under the
13 conditions described in this Order.

14 15. Defendants may review Protected Materials in this case only in the presence of a member
15 of the Defense Team, and his or her Defense Counsel shall ensure that each defendant is never left alone
16 with any Protected Information. Defendants may not copy, keep, maintain, or otherwise possess any of
17 such Protected Materials at any time. Defendants must return any Protected Materials to the Defense
18 Team at the conclusion of any meeting at which defendants review the Protected Materials. Defendants
19 may not take any Protected Materials out of the room in which they are meeting with the Defense Team.
20 Defendants may not write down or memorialize any PII contained in the Protected Materials. At the
21 conclusion of any meeting with defendants, the member of the Defense Team present shall take with
22 him or her all Protected Materials. At no time, under any circumstances, will any Protected Materials be
23 left in the possession, custody, or control of the defendant, whether or not he or she is incarcerated,
24 except as provided below.

25 16. If, during the pendency of the case, defendants request a copy of the Protected Materials
26 from Defense Counsel, Defense Counsel may provide a copy of the Protected Materials to the defendant
27 provided that Defense Counsel ensures that all PII contained in the Protected Materials is fully redacted.
28 If Defense Counsel provides a redacted copy to defendants subject to these conditions, Defense Counsel

1 or a member of the Defense Team must contemporaneously memorialize in writing that it has fully
2 redacted PII from the Protected Materials and complied with this Order. This written certification need
3 not be disclosed or produced to the United States unless ordered by the Court. Materials redacted in this
4 fashion are not subject to the restrictions in paragraph 15 above.

5 17. The Defense Team may review Protected Materials with a witness or potential witness in
6 this case. Before being shown any portion of the Protected Materials, however, any witness or potential
7 witness must be informed of the existence of the Protective Order and given a copy of the Protective
8 Order. No witness or potential witness may retain Protected Materials (whether redacted or not), or any
9 copy thereof, after his or her review of those materials with the Defense Team is complete.

10 18. This Order does not limit employees of the United States Attorney's Office for the
11 Eastern District of California from disclosing the Protected Materials to members of the United States
12 Attorney's Office, law enforcement agencies, the Court, and defense.

13 19. Defense Counsel shall advise the United States with reasonable notice of any subpoenas,
14 document requests, or claims for access to the Protected Materials by third parties if Defense Counsel is
15 considering disseminating any of the Protected Materials to a third party, in order that the United States
16 may take action to resist or comply with such demands as it may deem appropriate.

17 D. **Ensuring Security of Protected Materials**

18 20. The Defense Team shall maintain the Protected Materials safely and securely, and shall
19 exercise reasonable care in ensuring the security and confidentiality of the Protected Materials by storing
20 the Protected Materials in a secure place, such as a locked office, or otherwise secure facility where
21 visitors are not left unescorted.

22 21. A copy of the Protective Order must be stored with the discovery, in paper form and
23 electronically.

24 22. To the extent that Protected Materials, or any copies or reproductions thereof, are stored
25 electronically, the Protected Materials will be stored on a password-protected or encrypted storage
26 medium, including a password-protected computer, or device. Encryption keys must be stored securely
27 and not written on the storage media that they unlock.

28 23. If a member of the Defense Team makes, or causes to be made, any further copies of any

1 of the Protected Materials, Defense Counsel will ensure that the following notation is written, stamped
2 or inscribed on whatever folder, container, or media contains the copies: "PROTECTED MATERIALS-
3 SUBJECT TO PROTECTIVE ORDER." For example, if Defense Counsel makes a copy of a disc or
4 physical file containing Protected Materials, the duplicate disc or file must be encrypted and marked
5 with the above notation. In the event that the Defense Team makes or causes to be made copies of the
6 Protected Materials for purposes of hearing or trial, it does not need to include this inscription.

7 **E. Filings**

8 24. In the event that a party needs to file Protected Materials containing PII, or materials
9 otherwise identified as containing confidential information of victims, witnesses, or third parties with
10 the Court, or disclose PII in court filings, the filing should be made under seal as provided for by the
11 local rules. If the Court rejects the request to file such information under seal, the party seeking to file
12 such information shall provide advance written notice to the other party to afford such party an
13 opportunity to object or otherwise respond to such intention, including by making a request that the
14 filing party redact the PII or confidential materials. If the other party does not object to the proposed
15 filing, the party seeking to file such information may file the information without redaction.

16 **F. Conclusion of Prosecution**

17 25. The provisions of this Order shall not terminate at the conclusion of this prosecution. All
18 Protected Materials subject to the Protective Order maintained in the Defense Team's files shall remain
19 subject to the Protective Order unless and until such Order is modified by the Court.

20 26. Upon final disposition of the case, including exhaustion of direct and collateral appellate
21 proceedings, Defense Counsel shall return the Protected Materials to the government, or certify in
22 writing that the Protected Materials have been destroyed, but may retain copies of the Protected
23 Materials if the copies have been redacted to remove all PII as defined herein. If Defense Counsel retains a
24 redacted copy of the Protected Materials, Defense Counsel or a member of the Defense Team must
25 contemporaneously attest in writing that it has fully redacted PII from the Protected Materials and
26 complied with this Order. This written certification need not be disclosed or produced to the United
27 States unless ordered by the Court.

28 27. If, upon final disposition of the case, defendant requests a copy of the Protected Materials

1 from Defense Counsel, Defense Counsel may provide a copy of the Protected Materials to the defendant
2 provided that Defense Counsel ensures that all PII contained in the Protected Materials is fully redacted.
3 If Defense Counsel provides a redacted copy to defendant subject to the above conditions, Defense
4 Counsel or a member of the Defense Team must contemporaneously attest in writing that it has fully
5 redacted PII from the Protected Materials and complied with this Order. This written certification need
6 not be disclosed or produced to the United States unless ordered by the Court.

7 **G. Termination or Substitution of Counsel**

8 28. In the event that there is a substitution of counsel prior to final disposition of the case,
9 new counsel of record must join this Protective Order before any Protected Materials may be transferred
10 from the undersigned defense counsel to the new defense counsel. New defense counsel then will
11 become Defense Counsel for purposes of this Protective Order, and become Defense Team's custodian
12 of materials, and shall then become responsible, upon the conclusion of appellate and post-conviction
13 proceedings, for complying with the provisions set forth above. All members of the Defense Team,
14 whether current or past counsel, are at all times subject to the Protective Order and are not relieved by
15 termination of representation or conclusion of the prosecution.

16 **H. Modification of Order**

17 29. Nothing in this Order shall prevent any party from seeking modification to the Order or
18 from objecting to discovery it otherwise believes to be improper. Nothing in this Order shall prevent any
19 party from seeking a more restrictive protective order with regard to particular discovery items.

20 **I. Violation of Order**

21 30. Any person who willfully violates this Order may be held in contempt of court and
22 maybe subject to monetary or other sanctions as deemed appropriate by the Court. This provision does
23 not expand or narrow the Court's contempt powers.

24 **J. Application of Laws**

25 31. Nothing in this Order shall be construed to affect or comment on the admissibility or
26 discoverability of the Protected Materials.

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32. Nothing in this Order shall be construed to affect the application of and the parties' compliance with the Federal Rules of Criminal Procedure, Local Rules, and applicable statutes.

Date: December 21, 2020

McGREGOR W. SCOTT
United States Attorney

Date: December 21, 2020

/s/ Kimberly A. Sanchez
KIMBERLY A. SANCHEZ
Assistant United States Attorney

Date: December 21, 2020

/s/ Peter Jones
PETER JONES
Counsel for Defendant
ROBERT EVERSOLE

Date: December 21, 2020

/s/ John F. Garland
JOHN F. GARLAND
Counsel for Defendant
CODY BROWN

Date: December 21, 2020

/s/ **VIRNA SANTOS**
VIRNA SANTOS
Counsel for Defendant
ANGEL LOPEZ

IT IS SO ORDERED.

Dated: December 22, 2020

/s/ Barbara A. McAuliffe

UNITED STATES MAGISTRATE JUDGE